

McLachlan

Library 1774

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

March 15, 1985

Mr. Jeffrey B. Moore
Executive Director, South Carolina
Sheriff's Association
421 Zimacrest Drive, Suite 306
Columbia, SC 29210

Dear Mr. Moore:

You have indicated that there is pending in the General Assembly legislation to amend Section 61-13-410 of the Code which deals with the execution of a search warrant in connection with violations of law relating to intoxicating liquor. Such statute presently provides in part that:

"(a)ny person who shall upon presentation of a legally executed search warrant, and upon demand of any officer or agent of the Commission or of any peace officer, refuse to allow full inspection and search of the premises or who shall hinder or in any wise delay or prevent full inspection or search, shall be deemed guilty of a misdemeanor and, upon conviction, be fined not more than two hundred dollars or imprisoned for a period not exceeding sixty days, or both; provided, that no occupied dwelling house shall be searched between sundown and sunrise."

The pending legislation, S.223 and H.2327, which you referenced would remove the restraint on searching a dwelling house between sundown and sunrise as set forth in

REQUEST LETTER

Mr. Moore
Page Two
March 15, 1984

Section 61-13-410. 1/ You have indicated that a question has arisen concerning the constitutionality of the search of a dwelling house at night.

Generally, it has been determined that "(t)he matter of executing search warrants in the nighttime may be controlled by statute, although when a statute contains no provision limiting service to the daytime, service may be made at night without offending the constitutional guaranty against unreasonable searches." 45 Am.Jur. 2d, Intoxicating Liquors, Section 476 pp. 796-797. See also: 79 C.J.S. Searches and Seizures, Section 83, p. 900. While admitting that a search of a person's home is a "drastic intrusion upon personal rights" and that daytime searches are preferred to those conducted at night, courts have recognized that the nighttime search of a residence executed pursuant to a search warrant may be upheld where properly authorized. See: State v. Dalrymple, 458 P.2d 96 (1969). I am also enclosing for your information a copy of a previous opinion of this Office, 1983 Op. Atty. Gen. No. 83-6, which states that a search warrant obtained pursuant to Section 17-13-140 of the Code may be executed and any building including a dwelling, may be searched during the nighttime. The opinion notes that Section 17-13-140 was amended in 1969 to strike the provision that such warrant be served in the daytime. The opinion provides a good discussion of the subject of nighttime searches generally.

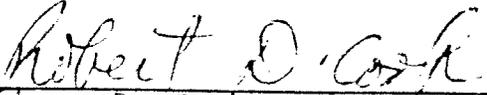
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosure

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions

1/ As stated, the referenced legislation would only amend Section 61-13-410. Consideration should also be given to removing the restraint on nighttime searches of dwelling houses set forth in Section 61-13-840 of the Code inasmuch as it is generally held that the execution of a search warrant must conform strictly to statutory requirements. 79 C.J.S. Searches and Seizures, Section 83(f) p. 904.